

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

JACK WILLIE DOTSON	§	
VS.	§	CIVIL ACTION NO. 1:11cv473
DIRECTOR, TDCJ-CID	§	

ORDER OVERRULING OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Jack Willie Dotson, a prisoner confined at the Stringfellow Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed the above-styled petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a conviction for murder.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, for consideration pursuant to 28 U.S.C. § 636 and applicable orders of this court. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the petition be denied with prejudice.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Petitioner filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections.

Petitioner asserted numerous grounds for review, each of which was thoroughly considered by the Magistrate Judge. After careful considering petitioner’s objections, the court agrees with the analysis of the Magistrate Judge.

Petitioner raises one procedural point. Title 28 U.S.C. § 2254 provides for a deferential standard of review. This court may not grant relief on a claim adjudicated on the merits in state court unless the adjudication of the claim: (a) was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the Supreme Court or (b) was based on an unreasonable application of the facts in light of the evidence presented in the state court proceeding. The Magistrate Judge applied this deferential standard of review. The Texas

Court of Criminal Appeals denied petitioner's state application for writ of habeas corpus without written order. Petitioner asserts that the deferential standard should not have been applied because the state court did not issue a written opinion and because he never received a full hearing as part of the state habeas proceeding.

Petitioner is mistaken. Section 2254 "does not require a state court to give reasons before its decision can be deemed to have been 'adjudicated on the merits.'" *Harrington v. Richter*, 131 S.Ct. 770, 785 (2001). Even if "a state court's decision is unaccompanied by an explanation, the habeas petitioner's burden still must be met by showing there was no reasonable basis for the state court to deny relief." *Id.* at 784. In addition, there is no requirement that a full and fair hearing have been conducted in state court in order for a federal court to give deference to the state court's factual findings. *Mathis v. Dretke*, 124 F. Appx. 865, 872 (5th Cir. 2005). As a result, the Magistrate Judge correctly applied Section 2254's deferential standard of review to the petition.

#### ORDER

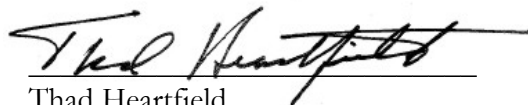
Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED** as the opinion of the court. A final judgment shall be entered in accordance with the recommendation of the Magistrate Judge.

In addition, the court is of the opinion that the petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying federal habeas relief may not proceed unless a judge issues a certificate of appealability. *See* U.S.C. § 2253. The standard that must be met in order to receive a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner is not required to demonstrate that he would prevail on the merits. Rather, he need only demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented in the petition are worthy

of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. If the petition was dismissed on procedural grounds, the petitioner must show that jurists of reason would find it debatable: (1) whether the petition raises a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Slack*, 529 U.S. at 484; *Elizalde*, 362 F.3d at 328. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir. 2000).

In this case, the petitioner has not shown that any of the issues raised by his claims are subject to debate among jurists of reason. The factual and legal questions raised by petitioner have been consistently resolved adversely to his position and the questions presented are not worthy of encouragement to proceed further. As a result, a certificate of appealability shall not issue in this matter.

**SIGNED** this the 24 day of **September, 2014**.

A handwritten signature in black ink, appearing to read "Thad Heartfield", written over a horizontal line.

Thad Heartfield  
United States District Judge